

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

MICHAEL W.,

Claimant,

and

THE SAN DIEGO REGIONAL CENTER,

Service Agency.

OAH No. 2011090236

DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, heard this matter in San Diego, California, on September 15, 2011.

Carol W., claimant's mother, represented claimant, who was not present for the fair hearing.

Ronald House, Attorney at Law, represented the San Diego Regional Center (SDRC).

Oral and documentary evidence was received and the matter was submitted on September 15, 2011.

ISSUE

Should the service agency fund respite services for claimant?

FACTUAL FINDINGS

Jurisdictional Matters

1. On August 8, 2010, claimant's mother filed a mediation request requesting respite services for claimant, then two years old. After discussing the matter on July 15, 2011, the parties were unable to resolve the issue, claimant requested a fair hearing, and this hearing ensued.

Evidence Introduced at Hearing

2. Claimant is a two-and-one-half year old male who receives Early Start services. Terri Cook-Clark, SDRC's Early Start manager, testified that Assembly Bill 9 amendments resulted in respite services no longer being available for Early Start consumers. However, SDRC reviewed claimant's request under the Lanterman Act because his Down syndrome diagnosis makes him eligible for SDRC services when he turns three. Cook-Clark testified that under the Lanterman Act SDRC may fund respite when the care and supervision needs of the consumer exceed that of an individual of the same age without developmental disabilities. Here, SDRC conducted a respite assessment and determined that claimant does not require any more supervision than a two-year-old child without disabilities would require. Accordingly, SDRC denied claimant's respite request.

3. Debra Reid, SDRC Program Manager, testified that as claimant ages and the gap widens between him and a child his same age without a disability, claimant may qualify for respite services at that juncture but not at this point in time.

4. Claimant's mother credibly testified about her son's needs and the toll those have placed on her and her husband. However, the evidence did not establish that claimant's care and supervision needs exceeded that required for a two year old child without a developmental disability. Furthermore, although not relevant to the determination made here, it is important to note that the evidence did not establish that claimant's extensive medical needs were related to his developmental disability.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. "Burden of proof" means the obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact or the court; except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence. (Evid. Code, § 115.) Claimant had the burden of proving that he qualified for respite services.

The Lanterman Act and Regional Centers

2. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Developmental Disabilities Services Act (the Lanterman Act) which is found at Welfare and Institutions Code section 4500 *et seq.*

3. The Lanterman Act provides a pattern of facilities and services sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life. The purpose of the statutory scheme is twofold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community, and to enable them to approximate the

pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

4. The State Department of Developmental Services (the DDS) is the public agency in California responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.) In order to comply with its statutory mandate, the DDS contracts with private non-profit community agencies, known as “regional centers,” to provide the developmentally disabled with “access to the services and supports best suited to them throughout their lifetime.” (Welf. & Inst. Code, § 4620.)

5. A regional center’s responsibilities to its consumers are set forth in Welfare and Institutions Code sections 4640-4659.

6. Welfare and Institutions Code section 4686.5 provides in part:

“(a) Effective July 1, 2009, notwithstanding any other provision of law or regulation to the contrary, all of the following shall apply:

(1) A regional center may only purchase respite services when the care and supervision needs of a consumer exceed that of an individual of the same age without developmental disabilities...”

Cause Exists to Deny the Request to Fund Respite Hours

7. A preponderance of the evidence did not establish that claimant’s care and supervision needs exceeded that of a two year old without a developmental disability. SDRC correctly determined that claimant is not eligible for respite services at this time.

ORDER

Claimant’s request that respite services be funded is denied. The San Diego Regional Center shall not fund respite services at this point in time.

DATED: September 23, 2011

MARY AGNES MATYSZEWSKI
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. Both parties are bound by this decision.
Either party may appeal this decision to a court of competent jurisdiction within ninety days.